



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAR 19 2004

Alan W. Weinblatt, Esq.
Weinblatt & Gaylord, PLC
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101

RE: MUR 5321
Janet Robert
Janet Robert for Congress and
Teresa Silha, as treasurer

Dear Mr. Weinblatt:

On October 21, 2002, the Federal Election Commission notified your clients, Janet Robert, and Janet Robert for Congress and Teresa Silha, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on March 4, 2004, found that there is reason to believe Janet Robert violated 2 U.S.C. § 441a(f), and Janet Robert and Teresa Silha, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

To support your clients' claim that the \$800,000 monetary gift from Mary Robert to Janet Robert became Janet Robert's "personal funds" because Mary Robert made similar gifts annually to each of her children and Janet Robert had sufficient financial assets to fund the loans to her campaign, please provide the following:

- A list of the gifts Mary Robert made to Janet Robert and to each of her other children. For each gift, provide the date, name of the recipient, amount or value of the gift, form of the gift (monetary or other form, *e.g.*, stock), and the purpose for the gift.
- Documents that reference the \$800,000 monetary gifts.
- Documents from the records of Janet Robert for Congress that reference Mary Robert's \$800,000 monetary gift.
- The source of funds for the personal loans Mary Robert made to her campaign in 2002 and documents that reference these loans.

Please submit the information requested above and any factual or legal materials that you believe are relevant to the Commission's consideration of this matter to the General Counsel's Office within 15 days of receipt of this letter. You may wish to submit supporting documentation evidencing the annual gifts. If you do not wish to provide supporting documentation at this time, please preserve such documents in case we require them in the future. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

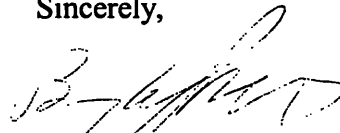
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Janet Robert
Janet Robert for Congress and Teresa Silha, as treasurer

MUR 5321

This matter was generated by a complaint filed with the Federal Election Commission by Donald F. McGahn II, General Counsel of the National Republican Congressional Committee. See 2 U.S.C. § 437g(a)(1).

I. BACKGROUND

The complaint in this matter alleges that Janet Robert ("the Candidate"), a candidate for Minnesota's Sixth Congressional District in 2002, knowingly and willfully accepted contributions from her mother, Mary Robert ("the Candidate's mother"), in excess of the contribution limits permitted by the Federal Election Campaign Act of 1971, as amended ("the Act"), and that Janet Robert for Congress and Teresa Silha, as treasurer, ("Robert Committee") failed to report these contributions.¹ Specifically, the complaint alleges that the Candidate used money given to her by her mother to make loans totaling \$811,219 to the Robert Committee. The complaint notes that in newspaper articles the Candidate has acknowledged receiving cash from her mother, but has refused to disclose the amount of the gift, claiming that the information is "personal." While the complaint notes that the Candidate "is technically a millionaire," it argues that because the bulk of her wealth is in bonds and stocks with limited marketability, absent her mother's gift she would not have had the funds to finance her \$1.5

¹ The Federal Election Campaign Act of 1971, as amended ("the Act") governs the activity in this matter and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by BCRA.

million ad campaign.² The Candidate acknowledges that her mother gave her a \$800,000 gift but argues that it constituted her "personal funds" because her mother made similar gifts annually to each of her siblings and because she had sufficient financial assets to fund the loans in her campaign.

II. FACTUAL AND LEGAL ANALYSIS

No person may make contributions to any candidate and his or her authorized political committee with respect to any election for federal office that exceeds \$1,000, and no individual may make aggregate contributions to political candidates and committees in excess of \$25,000 in any calendar year.³ 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3). These contribution limits also apply to a candidate's family members.⁴ The Act prohibits any candidate or political committee from knowingly accepting any excessive contribution. 2 U.S.C. § 441a(f). Political committees must report the identification of each person who makes a contribution or contributions with an aggregate value in excess of \$200 during the reporting period, together with the date and amount. 2 U.S.C. § 434(b)(3).

² The amount for the Robert campaign media expenditures comes from the news reports submitted with the complaint, citing the source as the Federal Communications Commission, showing that the Robert campaign spent more than \$1,500,000 in advertising expenses consisting of a total of \$1,340,000 in television ads, plus 12 to 18% usually paid as commission to a media buyer.

³ A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i).

⁴ In *Buckley v. Valeo*, 424 U.S. 1, 51 n.52 (1976) ("*Buckley*"), the Supreme Court stated that the legislative history of the Act provided, "[I]t is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for each election involved. S. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin. News 1974, p. 5627." The Court further stated, "Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53 n.59. The contribution limitations referenced in *Buckley* are at the same levels as those in the Act at 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).

The circumstances surrounding the \$800,000 gift, including the timing, amount, and form of the gift strongly suggest the Candidate's mother made the gift to influence the Candidate's election. First, the Candidate's mother gave the Candidate the \$800,000 gift on August 29, 2002, during the critical period leading up to the general election, and less than three weeks after she had reached her direct contribution limits to the candidate.⁵

The gift also coincided with the period when the Robert Committee had roughly \$180,000 in its coffers, but within three months had made substantial disbursements for media.⁶ Specifically, the Robert Committee made three media disbursements totaling \$1,566,000: \$900,000 on August 21, 2002; \$306,000 on September 18, 2002; and \$360,000 on September 24, 2002. To provide sufficient funds to cover these expenditures, the Candidate made four major loans totaling \$1,606,600 to her campaign. Specifically, on August 21, 2002, eight days before she received her mother's \$800,000 check, the Candidate made two loans totaling \$800,000 to her campaign: a \$750,000 bank loan secured with the Candidate's shares of stocks valued at \$1,142,457; and a \$50,000 loan from the Candidate's "personal funds." On August 24, 2002, the Candidate made a \$500,000 loan to her campaign also from "personal funds." Finally on September 18, 2002, the Candidate made a \$306,600 loan to her campaign again from "personal funds." Although the dates of two of the "personal loans" preceded the date of the \$800,000 gift, these loans could very well have been made as an advance, in anticipation of the \$800,000 gift. In addition to the loans, the Candidate made contributions totaling \$115,498 to her committee, for a combined total of \$1,722,098 in contributions/loans. If the \$800,000 gift from the

⁵ On August 10, 2002, the Candidate's mother had contributed \$2,000 to the Candidate – \$1,000 each for the primary and general elections.

⁶ The Robert Committee's 2002 Pre-Primary report indicates that as of July 1, 2002, the Robert Committee had \$179,517.07 in cash-on-hand.

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Candidate's mother constitutes a contribution, it would represent 36% of the Robert Committee's total receipts. In short, it appears that the \$800,000 gift enabled the Candidate to infuse her committee with sufficient funds to cover campaign expenses.

Though the Candidate's net worth would seem sufficient to cover such costs, news reports of the Candidate's financial disclosure statement suggest that most of the candidate's assets were not liquid.⁷ Moreover, because the EIGA statement shows assets in a broad range rather than in specific amounts, it is not clear whether the Candidate would have had sufficient liquid assets to make the loans. News reports also state that the Candidate with her family own the Siegel-Robert Company, that the Company's stock has limited marketability because it is not publicly traded, and that the Candidate has stated that her main assets are her 361,000 shares in Siegel-Robert now worth about \$6,500,000. See Greg Gordon, *Boardroom action dogs candidate; Robert calls incident honest dispute*, Star Tribune (Minneapolis, MN), Aug. 1, 2002, at 1B. The reports further note that most of the Candidate's income has been derived from Siegel-Robert stock dividends, and that the Candidate earned a net income of nearly \$700,000 in 1999. See Greg Gordon, *Robert is flooding House race with money; Most of it is from her own*

⁷ The complaint references news reports that provide information on the Candidate's financial activities as to family-owned Siegel-Robert, Inc., and the Candidate's financial disclosure statement that she filed as required for House candidates under the Ethics in Government Act ("EIGA"), 2 U.S.C. § 101 *et seq.* See Greg Gordon, *Robert is flooding House race with money; Most of it is from her own pocket*, Star Tribune (Minneapolis, MN), Oct. 5, 2002, at A1; Greg Gordon, *Boardroom action dogs candidate; Robert calls incident honest dispute*, Star Tribune (Minneapolis, MN), Aug. 1, 2002, at 1B. The news reports reflect that, as of August 7, 2002, the Candidate reported the following assets on her financial disclosure statement:

Stock in family-owned Siegel-Robert, Inc. --\$5,000,000-\$25,000,000
 Common stocks--\$11,000-\$165,000
 Bank accounts--\$300,000-\$600,000
 First American Prime Oblig Ed A--\$50,000-\$100,000
 Mortgage (owed to Robert)--\$50,001-\$100,000
 Bonds--\$30,000-\$100,000
 Brokerage account--\$50,000-\$100,000
Total assets--\$5,491,000-\$26,165,000
Liquid Assets--\$391,000-\$1,150,000

pocket, Star Tribune (Minneapolis, MN), Oct. 5, 2002, at A1. Based on the amount of liquid assets available to the Candidate, reportedly in the \$391,000 to \$1,150,000 range, after she had already encumbered her stock (and the bulk of the stock had limited marketability), it appears that without the \$800,000 monetary gift, she may not have had enough assets to cover campaign costs. Moreover, the form of the gift, a monetary transfer, would have provided the candidate with the liquidity to make the \$1,722,098 in personal loans and contributions to her campaign.

A candidate for federal office may make unlimited expenditures and loans from personal funds. 11 C.F.R. § 110.10. The Commission's regulations define "personal funds" as, *inter alia*, gifts of a personal nature which had been customarily received prior to candidacy, and proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 110.10(b)(2). While the Candidate argues that the \$800,000 monetary gift fits the category of "gifts of a personal nature customarily received prior to candidacy," the Candidate has not submitted sufficient information to support this contention.

The Candidate argues that the gift constitutes "personal funds" because her mother made similar gifts annually to each of her children. She further argues that her financial disclosure statement, showing liquid assets of up to \$1,150,000 and total assets exceeding \$26,000,000, demonstrates that she had more than sufficient assets to fund the loans to her campaign. The Candidate, however, has not provided specific information on her mother's annual gifts. In addition, information from the Candidate's financial disclosure statement raises questions about the Candidate's contention that she had sufficient assets to make the loans. As stated earlier, it appears that the bulk of the Candidate's assets are in shares of limited marketability Siegel-Robert stocks. Moreover, the \$750,000 bank loan to the campaign had encumbered the Candidate's shares of stocks, further limiting the Candidate's options. Thus, additional

information regarding the Candidate's liquidity could also substantiate the Candidate's claims regarding her ability to make the loans in question.

The Commission has focused on objective factors in determining whether a gift fits into the category of "gifts of a personal nature customarily received prior to candidacy." For example, in Advisory Opinion 1988-7, the Commission responded to an inquiry from an "undeclared candidate" for a House seat in 1988 regarding his contribution of monetary gifts from his parents as personal funds to his campaign. The requester had received a gift of \$20,000 in each of the three years prior to his candidacy and believed his parents would give him another gift of \$20,000 during 1988. The requester asked whether he could contribute the expected \$20,000 as "personal funds" even though he had not received the gift prior to filing a Statement of Candidacy with the FEC. The Commission looked at the date the gifts began, the consistency in the amount, and the form of the gifts over a number of years in making its interpretation. The Commission found that the \$20,000 cash gifts he received in the three years prior to his candidacy indicated a "repetitious custom of monetary gifts" of a personal nature, rather than gifts made in anticipation of or related to any campaign for federal office. The Commission thus concluded that another \$20,000 cash gift under similar circumstances during 1988 would similarly be considered personal funds.

Unlike the requester in AO 1988-7, the Candidate has not provided information showing that her mother customarily made gifts similar to the \$800,000 monetary gift prior to her candidacy. Instead, the Candidate has only made general representations regarding previous gifts and has not yet provided specific information about the amount, form, timing, or recipients of previous gifts her mother made to her and her siblings.

Based on the above, it appears that the \$800,000 monetary gift the Candidate's mother made to the Candidate is an excessive contribution rather than the Candidate's "personal funds." Thus, the Candidate and the Robert Committee may have knowingly accepted the excessive contribution and the Robert Committee may have incorrectly reported the excessive contribution from the Candidate's mother as personal loans from the Candidate. Therefore, there is reason to believe that Janet Robert violated 2 U.S.C. § 441a(f) and Janet Robert for Congress and Teresa Silha, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).